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SUPREME COURT OF ARIZONA

In the Matter of	)	Arizona Supreme Court
	)	No. R-09-_____
SUA SPONTE PETITION TO	)	
AMEND RULE 72(b),	)	
RULES OF THE SUPREME	)	
COURT	)	Sua Sponte Petition to Amend
	)	Rule 72(b)
	)	
_____	)	

I. EXPLANATION AND SUMMARY OF PROPOSED CHANGES

In the case of short-term suspensions from the practice of law, the proposed amendment to Rule 72(b) provides an alternative to the requirement of obtaining “substitute counsel.” Currently, Rule 72(b) requires a respondent to seek leave to withdraw if a client has not obtained substitute counsel before the effective date of the suspension. In most cases, withdrawal of counsel and substitution of counsel require formal motions. When the lawyer will be suspended for a short period of time and the client wants him/her to return as counsel of record after reinstatement, filing formal motions to withdraw and/or substitution of counsel in all pending cases creates work for the parties and uses the resources of the courts in ways that may not

be necessary to protect the public. The proposed amendment would allow a respondent, with written consent of the client, to “associate” with another attorney during a short suspension. This would require the suspended lawyer to file a “Notice of Association During Pendency of Suspension” in all matters pending in any court or agency. The notice would serve to inform the court and opposing parties of the association of counsel during the short-term suspension without necessitating formal motions or court action. This association does not alter the suspended lawyer’s duty not to practice law. Upon reinstatement, the lawyer is required to file a notice of appearance as counsel of record and dissolve the association, or move for leave to withdraw.

In the event the suspended lawyer is not reinstated within the time limits of Rule 64(e)(2), he or she would be required to seek reinstatement through the formal procedures of Rule 65, thus extending the period of suspension. To limit this association of counsel to short-term suspensions, the rule amendment provides that if the suspended lawyer does not obtain reinstatement within one hundred twenty days of the effective date of the suspension, he or she must move to withdraw as counsel in the relevant matters.

In the case of suspensions for longer than sixty days, or suspensions of sixty days or less when the client does not consent to the association of counsel, and in all cases of disbarment, transfer or resignation, the duty to withdraw under Rule 72 remains the same.

II. TEXT OF PROPOSED RULE CHANGE

**Rule 72. Notice to Clients, Adverse Parties and Other Counsel**

(a) [unchanged]

(b) **Association of Counsel; Duty to Withdraw**

(1) **Association of Counsel:** In the case of suspensions of sixty days or less, the suspended lawyer may choose, with the written consent of the client, to associate with another lawyer in matters pending in any court or agency during the period of suspension. This rule does not modify the suspended lawyer's duty not to practice law during the period of suspension. It shall be the responsibility of the suspended lawyer to file the "Notice of Association During Pendency of Suspension" in the relevant matters prior to the effective date of the suspension. It shall also be the responsibility of the lawyer, upon reinstatement to active status, to file either a notice of appearance as counsel of record and dissolve the association, or move for leave to withdraw in the relevant matters. In the event the suspended lawyer is not reinstated pursuant to Rule 64(e)(2) within one hundred twenty days of the effective date of the suspension, the lawyer shall promptly move for leave to withdraw in the relevant matters.

(2) **Duty to Withdraw:** ~~In the event the client does not obtain substitute counsel before the effective date of the sanction, transfer or resignation~~ In the case of suspensions for longer than sixty days, or suspensions of sixty days or less when the client does not consent to the association of counsel, and in all cases of disbarment, transfer or resignation, it shall be the responsibility of the disbarred, suspended, transferred or resigned lawyer to move in the court or agency in which the proceeding is pending for leave to withdraw in the event the client does not obtain substitute counsel before the effective date of the sanction, transfer or resignation.

DATED this 9th day of January, 2009.

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